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Paper 42  
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UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES

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Patent Interference 105,619 McK  
Technology Center 1600

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**BETH ISRAEL DEACONESS MEDICAL CENTER,**  
**YALE UNIVERSITY and IKARIA HOLDINGS, INC.**  
(Inventors: FRITZ H. BACH, LEO E. OTTERBEIN,  
MIGUEL P. SOARES and JEANNE GOSE),

Patent 7,238,469 B2,  
Junior Party,

v.

**DAVID J. PINSKY, DAVID M. STERN**  
**and CHARLES J. PRESTIGIACOME,**

Application 10/679,135,  
Senior Party,

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*Before: FRED E. McKELVEY, Senior Administrative Patent Judge, and*  
*RICHARD E. SCHAFER and JAMES T. MOORE, Administrative Patent*  
*Judges.*

*McKELVEY, Senior Administrative Patent Judge.*

**JUDGMENT**

Upon consideration of the CONCESSION OF PRIORITY TO  
PINSKY (Paper 41 filed by the Junior Party, it is

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FURTHER ORDERED that Junior Party BETH ISRAEL DEACONESS MEDICAL CENTER, YALE UNIVERSITY, IKARIA HOLDINGS, INC., and inventors FRITZ H. BACH, LEO E. OTTERBEIN, MIGUEL P. SOARES and JEANNE GOSE are not entitled to a patent containing claims 1-14, 20-36 and 49-54 (corresponding to Count 1) of U.S. Patent 7,238,469 B2, granted 03 July 2007.

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FURTHER ORDERED that judgment on priority as to Count 2 (Paper 1, page 9) is awarded against Junior Party BETH ISRAEL DEACONESS MEDICAL CENTER, YALE UNIVERSITY, IKARIA HOLDINGS, INC., and inventors FRITZ H. BACH, LEO E. OTTERBEIN, MIGUEL P. SOARES and JEANNE GOSE.

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1 FURTHER ORDERED that claims 1-13, 16, 20-33, 40-42 and  
2 49-54 of U.S. Patent 7,238,469 B2 are cancelled. 35 U.S.C. § 135(a).

3 Count 3

4 FURTHER ORDERED that judgment on priority as to  
5 Count 3 (Paper 1, page 10) is awarded against Junior Party BETH ISRAEL  
6 DEACONESS MEDICAL CENTER, YALE UNIVERSITY, IKARIA  
7 HOLDINGS, INC., and inventors FRITZ H. BACH, LEO E. OTTERBEIN,  
8 MIGUEL P. SOARES and JEANNE GOSE.

9 FURTHER ORDERED that Junior Party BETH ISRAEL  
10 DEACONESS MEDICAL CENTER, YALE UNIVERSITY, IKARIA  
11 HOLDINGS, INC., and inventors FRITZ H. BACH, LEO E. OTTERBEIN,  
12 MIGUEL P. SOARES and JEANNE GOSE are not entitled to a patent  
13 containing claims 46, 49-51, 53, 56-62, 65 and 89 (corresponding to  
14 Count 3) of U.S. Patent 7,238,469 B2, granted 03 July 2007.

15 FURTHER ORDERED that claims 46, 49-51, 53, 56-62, 65  
16 and 89 of U.S. Patent 7,238,469 B2 are cancelled. 35 U.S.C. § 135(a).

17 Other matters

18 FURTHER ORDERED that if there is a settlement agreement,  
19 attention is directed to 35 U.S.C. § 135(c).

20 FURTHER ORDERED that a copy of this JUDGMENT shall  
21 be placed in the files of (1) U.S. Patent 7,238,469 B2 and (2) application  
22 10/679,135.

23 FURTHER ORDERED that the Clerk is directed to distribute  
24 the files upon entry of this JUDGMENT.

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